

15-23 should be examined with Groups IV, V, and VII, claims 11, 12, and 14.

The present invention is directed to the enzymatic production of biomolecules. Specifically, the present invention is directed to two novel fructosyltransferases derived from lactobacilli which are capable of producing levans, inulins, fructo-oligosaccharides and fructo-polysaccharides from sucrose. Claims 15-23 are directed to a process for producing fructo-oligosaccharides and fructo-polyisaccharides. Claims 11, 12 and 14 recite subject matter related to the downstream results of new claims 15-23. In fact, claims 12 and 14 are directly dependent on claim 15. It is believed to be apparent that the claims of groups III, IV, V and VII are directed to subject matter in which a search and examination can be completed within a narrow discipline. The Official Action fails to satisfy the burden of showing that a search and examination of claims 11, 12, and 14-23 would be an undue burden.

The outstanding Official Action contends that Groups III, IV, V, and VII are patentably distinct from each other because they are subject to separate manufacture and sale. Furthermore, the Official Action contends that the groups have acquired a separate status in the art and separate fields of search, as indicated by their separate classification. However, these assertions are respectfully traversed.

Separate classification has no evidence of propriety of the requirement for restriction. Classification is solely for

the convenience of the Patent Office and the searching public and cannot diminish an applicant's rights in any way.

Furthermore, it is noted that whether certain portions of the claims are subject to separate manufacture and sale, it is immaterial to the determination of a proper restriction requirement. Section 803 of the Manual of Patent Examining Procedure provides that an application may properly be restricted to one of two or more claimed inventions, only if the search and examination places a serious burden on the Examiner. As claims 11, 12, and 14-23 are directed to subject matter in which a search and examination can be completed within a narrow discipline, it is respectfully submitted that the restriction requirement set forth in the outstanding Official Action is improper.

In light of the above discussion, therefore, it is believed that applicants are entitled to an action on the merits for claims 11, 12, and 14-23, in their full scope, in the present application. Such action is accordingly respectfully requested.

Attached hereto is a marked-up version of the changes

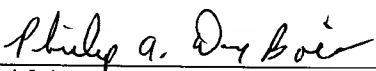
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made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

Respectfully submitted,

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September 3, 2002

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claim 12 was amended as follows:

--12. (amended) A probiotic or symbiotic composition containing a *Lactobacillus* strain capable of producing an inulin, a levan or fructo-oligosaccharides according to claim [10] 15 and optionally a glucan.--

Claim 14 was amended as follows:

--14. (amended) A process of improving the microbial status of the mammalian colon comprising administering an effective amount of an oligosaccharide or polysaccharide produced according to claim [10] 15.--